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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/686,289

10/15/2003

Jose Barbosa Machado Neto

J92-054US

7118

21706 7590 09/07/2007

NOTARO AND MICHALOS

100 DUTCH HILL ROAD

SUITE 110

ORANGEBURG, NY 10962-2100

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

09/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/686,289

Applicant(s)

NETO, JOSE BARBOSA
MACHADO

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 8-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims are replete with subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The claims appear to contain a number of instances of New Matter. These include the next to last line of claim 8, "an apparatus" and essentially all of paragraphs "c", "d", "e" and "g" of claim 9 and claims 10 and 11. The specification appears to be totally silent as to thickness, an external cover, let alone a thickness up to 10mm, a superficial skin, the PLC recording all meat features (whatever they are, since they are not disclosed), automatically dimensioning the type, etc... , head type sensitive to the features of the meat, the calorie producing equipment being electronically regulated with a defined precision according to type, size, and origin of the meat, due to its variation with these "features", and the fact that the vacuum or gas maintains the engraving or marking. None of these recitations are necessarily and inherently supported by the specification as originally filed and the amendment does not discuss where in the specification one finds support for all of these phrases.

In regard to claim 8, and as noted previously, in the rejection of now cancelled claim 1, Hnatek ('813) discloses a method to obtain a meat type food product which would be capable of immediate consumption or later preparation, that is provided with a

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marking, which, using a laser, will inherently provide an engraving (although note that the claim recites marking or engraving), which laser is a calorie producing apparatus, and wherein the marking is made on an external surface of the food. As noted previously, since Hnatek discloses employing a computer to make the marking, Hnatek would inherently have used a PLC which would have been previously programmed according to the type of food and thus according to the type of meat. Note, too, the marking would be recognized visually by the naked eye when exhibited for consumption.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of the prior art in view of Hnatek (DE'813), further in view of Drouillard et al ('747), Billyon et al (DE'821), Tanio et al (JP'692), Eger (DE'360), Hnatek (DE'379), Luigi (EP'154), Softech (JP'390), Leu Anlagenbau (CH'393), Van Wyk et al ('621), and Bowling ('535).

In regard to claim 9, and as noted previously, in the rejection of now cancelled claim 2, applicant's admission of the prior art discloses that it was conventional to provide food products, season the food, cook, bake or fry the food, sterilize the food, wrap the food, refrigerate or not refrigerate the food, and heat the food. Applicants' admission of the prior art further discloses that it was conventional to provide markings

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on either the food package or on "seals" fastened directly to the product. Claim 9 differs from applicant's admission of the prior art in that, after the food is cooked, markings are provided directly on the food. As evidenced by Hnatek ('813), it was notoriously conventional to provide markings directly on the food. Drouillard et al ('747), Billyon et al (DE'821), Tanio et al (JP'692), Eger (DE'360), Hnatek (DE'379), Luigi (EP'154), Softech (JP'390), Leu Anlagenbau (CH'393), Van Wyk et al ('621), and Bowling ('535) are all relied on as further evidence that it was notoriously conventional to mark all types of foods including meat products with logos, product information, etc. and to employ various conventional marking systems such as lasers and branding type elements. To therefore modify applicant's admission of the prior art and substitute one conventional expedient to provide markings for another conventional expedient to provide markings would therefore have been obvious. Similarly, employing Hnatek ('813) as the primary reference, Hnatek ('813), as further evidenced by Drouillard et al ('747), Billyon et al (DE'821), Tanio et al (JP'692), Eger (DE'360), Hnatek (DE'379), Luigi (EP'154), Softech (JP'390), Leu Anlagenbau (CH'393), Van Wyk et al ('621), and Bowling ('535) are seen to have been general teachings to provide markings directly on a food product. Note that Hnatek ('813) discloses a meat product which would have had to be cooked to some degree to accept and retain the marking. Also, whether the product is first cooked or cooked after is seen to have been an obvious matter of choice. The art taken as a whole discloses marking fresh or cooked foods including meat. In regard to the temperature range (which has no units), what temperature one chooses to heat a product to is seen to have been an obvious result effective variable, routinely

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determinable. Claim 9 differs from Hnatek ('813) in the steps of cutting, and the other steps, acknowledged to have been conventional in applicant's admission of the prior art. To modify Hnatek('813) and employ the conventional steps would have been an obvious function of the particular conventional food to be processed, routinely determinable, and a matter of choice. In regard to paragraph c, like so much of the rest of the claim language, this external cover is recited in the alternative as being essentially no cover, and just "the skin to 10 mm", which would be readable on none. In regard to paragraph d, the particular "features" one chooses to program is seen to have been an obvious matter of choice. In regard to claims 10-14, it is noted that these claims are dependent on cancelled claim 1. To expedite prosecution, these claims have been construed to be dependent on claim 9. These claims are rejected for the reasons given above. It is noted that the art taken as a whole discloses calorie producing equipment of the laser type or heated metal head type as noted in the last Office action, and how one chooses to program the equipment to achieve the conventional marking result would have been routinely determinable.

All of applicant's remarks filed 6/22/07 have been fully and carefully considered but are not found to be convincing. It is first noted that the urgings are very hard to comprehend since proper English usage is not always used. Also, the remarks appear to be urging limitations that are not only hopelessly New Matter, but are unclear and undefined as well. Other remarks are based on recitations that are recited in the alternative, so they, too, are not convincing, and still others are directed to limitations not found in the claims. For example, "low relief" is urged, but this phrase is not a

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positive recitation of the claims. However, even if it was, the urging would still not be convincing, since the art teaches applicants marking methods are notoriously conventional. The references which disclose fruit are relied on as further evidence of the conventionality of marking foods directly. Also, there is nothing in the record which evidences that lasers will not inherently cause at least some engraving of the marking. Note, however, that the claims do not positively require engraving. The claims recite marking or engraving. The urgings also refer to "special" packaging, but there is no evidence in the claims for special packaging.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
9/5/07